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U.S. SAMERUPTCY DISTANCE OF ARIZONA

Attorney for Plan Trustee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11 Proceedings
BCE WEST, L.P., et al. Debtors.	Case Nos. B-98-12547-ECF-CGC through 98-12570-ECF-CGC (Joint Administration)
GERALD K. SMITH, Plan Trustee Plaintiff,	Adversary No. 00 450
vs. BERRY PLASTICS CORPORATION,) COMPLAINT TO AVOID PREFERENTIAL TRANSFER)
Defendant.))

Plaintiff, by and through his counsel undersigned, hereby states:

- On or about October 5, 1998, Debtors filed petitions pursuant to Chapter 11 of the United
 States Bankruptcy Code.
 - 2. The Court entered an Order Confirming Debtors' Plan on May 15, 2000. (Docket #1795).
 - 3. Plaintiff has been appointed the Plan Trustee by Court Order dated May 25, 2000.

(Docket #1823.)

4. This Court has jurisdiction over this adversary proceeding pursuant to 11 U.S.C. § 547 and 28 U.S.C. §§ 157(b)(2)(F) and (O).

- 5. Defendant **Berry Plastics Corporation** conducted business with the Debtor(s) prior to the filing of the Chapter 11 Petitions herein.
- 6. On August 21, 1998, the Debtors paid \$150,879.65 to the Defendant on an antecedent debt. Specifically, the debt was for a bill dated May 29, 1998.
- 7. The above-referenced payment to Defendant was a transfer of an interest in the Debtors' property to or for the benefit of Defendant for or on account of an antecedent debt owed by the Debtors before the transfer was made, and while the Debtors were insolvent.
 - 8. The Debtors were insolvent at all times relevant to these proceedings.
- 9. The effect of the payment was to enable Defendant **Berry Plastics Corporation** to receive more than it would normally receive if the transfer had not been made, and if it received a payment under Chapter 7 of the Bankruptcy Code.

WHEREFORE, Plaintiff requests the Court enter a judgment against Defendant **Berry Plastics**Corporation as follows:

- 1. For an order requiring Defendant **Berry Plastics Corporation** to turn over, as a preference, the sum of \$150,879.65 to the Plaintiff;
 - 2. For attorneys' fees and costs incurred herein; and
 - 3. For such other and further relief as the Court deems just and proper.

DATED this 44 day of October, 2000.

MICHAEL W. CARMEL, LTD.

Michael W. Carmel

80 East Columbus Avenue

Phoenix, Arizona 85012-2334

Attorney for Plaintiff